INSURANCE — INDEMNITY — MEANING OF "ACCIDENT." — Defendant insured plaintiff against loss imposed by law upon employers for damages on account of bodily injuries or death accidentally suffered by an employee while on duty. Plaintiff was held liable to a hostler who contracted glanders from a diseased horse. In an action on the policy, *held,* that this was such an injury as came within the same. *H. P. Hood & Sons* v. *Maryland Casualty Co.* (1910), — Mass. —, 92 N. E. 329.

The decision is in accord with the great weight of authority. The case of *Hensey* v. *White* [1900], 1 Q. B. 481, laid down a contrary rule, holding that an internal rupture was not an accidental injury, there being an "entire absence of the fortuitous element." This doctrine of fortuitious element however was expressly repudiated in *Fenton* v. *Thorley & Co.* [1903], A. C. 443, which interprets accident in the popular ordinary sense, as any unexpected, personal injury resulting to a workman from any unlooked for mishap or occurrence, the court holding that an internal rupture was an accidental injury. In *Brinton's Ltd.* v. *Turvey* [1905], A. C. 230, the court citing *Fenton* v. *Thorley,* held that anthrax contracted by an employee while sorting wool, was accidental. Again in *Glover, Clayton & Co.* v. *Hughes* [1910], A. C. 242, the court again citing *Fenton* v. *Thorley,* came to a similar decision. Others to the same effect are *Ismay, Irmie & Co.* v. *Williamson* [1908], A. C. 437; *Wicks* v. *Dowell & Co.* [1905], 2 K. B. 225. In the *Columbia Paper Stock Co.* v. *Fid. & Cas. Co. of N. Y.,* 104 Mo. App. 157, the court, holding that a disease contracted through the handling of rags was an accident, pertinently asked if there would be any doubt if the rags were to emit a poisonous gas causing instant death. In *Bacon* v. *U. S. Mut. Co.,* 123 N. Y. 304, the court held that anthrax contracted while handling hides was not accidental. The policy however called for an external, violent and accidental means of injury. Still the judges did not put their decision on the ground of lack of violence, but rather on the ground of lack of accidental features. On the other hand, *U. S. Mut. Acc. Assn.* v. *Barry,* 131 U. S. 100, under a still more restricted policy, announced a doctrine contrary to the above New York case and in line with the principal case. The principal case is further strengthened by the fact that policies are interpreted strongly against the insurer. *American Surety Co.* v. *Pauly,* 170 U. S. 133. MAY, INSURANCE, Ed. 4, §§ 174, 175. VANCE, INSURANCE, p. 430. Other decisions supporting the main one are *Freeman* v. *Mercantile Mutual Acc. Ass'n.,* 156 Mass. 351; *Aetna Life Ins. Co.* v. *Fitzgerald,* 165 Ind. 317; *Cary* v. *Preferred Acc. Ins. Co.,* 127 Wis. 67; *Omberg* v. *U. S. Mutual Acc. Ass'n,* 101 Ky. 303; *Delaney* v. *Modern Acc. Club,* 121 Ia. 528; and even New York leans somewhat in that direction in *Martin* v. *Mfg. Acc. Indem. Co.,* 151 N. Y. 94. Cases which have some contrary weight are *Dozier* v. *Fidelity Co.* (C. C.), 46 Fed. 446; *Southard* v. *Railway Co.,* 34 Conn. 574; *Feder* v. *Iowa State Traveling Men's Ass'n,* 107 Iowa 538.

LANDLORD AND TENANT—DEPRIVATION OF HEAT—EVICTION.—Three radiators in a leased apartment were removed at the request of tenant. During the following winter tenant complained of lack of heat, but refused to allow

landlord to restore the radiators or to install larger ones of a different variety. Tenant's family became ill and were compelled to move to a hotel, leaving their goods in the apartment. Rent was paid for the following month but thereafter was not paid, and the landlord sued. *Held,* the landlord's failure to provide sufficient heat was not a constructive eviction. *Merida Realty Co.* v. *Coffin* (1910), 123 N. Y. Supp. 120.

Ordinarily, failure of landlord to supply heat would be a constructive eviction, if tenant promptly abandons the premises. *Jackson* v. *Paterno,* 58 Misc. 201, 108 N. Y. Supp. 1073; *Lawrence* v. *Burrell,* 17 Abb. N. C. 312. But if tenant obstructs prompt action on the part of the landlord, a different rule governs. The landlord has a right to a reasonable opportunity to rectify the defect, and in case of compliance with notice, no eviction can be predicated upon the temporary inconvenience of the tenant. *O'Gorman* v. *Harby,* 18 Misc. 228, 41 N. Y. Supp. 521. In the principal case failure of tenant to remove goods at once, and payment of rent for the subsequent month, combined with his action in refusing landlord permission to repair to overcome defense of constructive eviction.

MUNICIPAL CORPORATIONS—NUISANCES—BILLIARD HALLS AND POOLROOMS. —The town of Eldorado, Oklahoma, acting under the authority of § 847 of Snyder's Comp. Laws 1909 which provides that the boards of trustees of incorporated towns and villages shall have the following powers, namely: "(4) to declare what shall constitute a nuisance and to prevent, abate and remove the same," passed an ordinance which in substance declared that all billiard and poolrooms shall be deemed a nuisance and making it punishable by a fine of twenty-five dollars, etc., etc., for any person, either as owner, servant, or employee to open, establish or carry on the same within the corporate limits of the town. This ordinance became effective on Jan. 1, 1910. On Jan. 25, 1910, the petitioner, W. C. Jones, was convicted before the town justice of Eldorado of violating said ordinance by running a poolroom for hire in said town and sentenced to pay a fine of $25 and costs, failing to pay which he was committed to the town jail of Eldorado. He contended his imprisonment was illegal on two grounds, the first of which was that the ordinance in question was void for want of power in the trustees to enact the same. *Held,* the ordinance is valid and within the power of the town of Eldorado as conferred by the aforesaid section and moreover the enforcement of such ordinance infringes no constitutional right of plaintiff. *Ex parte Jones* (1910), — Okl. —, 109 Pac. 570.

In doubtful cases where a thing may or may not be a nuisance, depending on a variety of circumstances requiring judgment and discretion on the part of the town authorities in exercising their legislative functions, under a general delegation of power like the one in the principal case, the action of the town officials under such circumstances would be conclusive on the courts. This doctrine is set forth and followed in these cases: *North Chi. City R. R. Co.* v. *Town of Lake View,* 105 Ill. 207, 44 Am. Rep. 788; *Harmison et al.* v. *City of Lewiston,* 153 Ill. 313, 38 N. E. 628, 46 Am. St. Rep. 893; *Kansas City* v. *McAleer,* 31 Mo. App. 433; *Glucose Refining Co.* v. *City of*